

# **Gov. Markell, Speaker Gilligan, President Pro Tem DeLuca Unveil Delaware Elections Disclosure Act**

*Bill would close loophole, enhance disclosure and require prompt reporting of PAC spending on ads or mailings*

(DOVER, Del.) – House Speaker Robert F. Gilligan, Senate President Pro Tem Anthony J. DeLuca and Governor Jack Markell today announced two bills to reform and modernize Delaware’s election laws. If passed, the Delaware Elections Disclosure Act and a companion bill would represent the most significant update of the state’s election disclosure laws since 1990.

The Delaware Elections Disclosure Act would close a loophole under existing law by requiring prompt reporting of third-party spending on advertisements during an election season, including “electioneering communications” that try to influence voters in the days before they go to the polls.

The Act would also enhance disclaimer requirements for third parties, i.e., not candidates or political parties, who buy election ads, and would require these ads to include a statement that additional information about the purchasing party may be found on the Commissioner of Elections’ web site. The prime sponsor of the Act is Rep. Gilligan, with Sen. DeLuca serving as lead sponsor in the Senate.

“Delaware’s existing election disclosure laws were adopted in 1990. Since then, we’ve seen big increases in third-party spending on elections and major changes in how the Constitution has been interpreted with regards to campaign spending. Our laws have not kept pace,” said Governor Markell. “We need to make sure that Delaware voters get all

the information they need about who is trying to influence their vote. This legislation will close a loophole in our state's campaign finance laws, will increase transparency, and will help ensure that voters receive timely information about where PAC spending comes from and how it is spent."

Rep. Gilligan said that in recent years, groups have skirted the state's campaign finance laws by taking out so-called "issue advocacy" ads.

"When Delawareans hear a radio ad, see a TV commercial or pull a campaign ad out of their mailbox, they deserve to know who is behind the ad – and they deserve to know it before they cast their vote," said Rep. Gilligan. "In an age of transparency and openness, this is common-sense legislation. If someone wants to advocate for or against a candidate, that is their right. But it is time to draw this type of campaigning out of the shadows."

Bill sponsor and Senate President Pro Tem Anthony DeLuca, D-Newark said that "some of the most damning attack ads against candidates come from PACs and other outside groups that have been able to hide behind loopholes in the election laws to stay anonymous. This legislation updates existing laws by requiring immediate reporting of all campaign ads purchased by PACs or other third parties and the identification of a responsible party for large contributions by PACs and other entities."

James Browning, Regional Director of Common Cause, supports the proposal. "The great danger of *Citizens United* is that a few deep-pocketed interests can now flood a particular race of a particular state with unlimited and often undisclosed political expenditures," said Browning. "Gov. Markell's proposals will significantly strengthen Delaware's campaign finance laws, and make it much easier for people to follow the political money."

“Given the amount of special interest money we are seeing in state elections across the nation, it is crucial to pass this legislation and let the sun shine,” said Mimi Marziani, counsel for the Brennan Center for Justice at the NYU School of Law.

The Delaware Elections Disclosure Act would:

- **Require reporting of all campaign ads, not just ads that “expressly advocate” for the election or defeat of a candidate.** Under current law, persons who buy ads that are not coordinated with any candidate (known as “independent expenditures”) must file disclosure reports, but only if the ads expressly advocate for the election or defeat of a clearly identified candidate. That means that persons who buy ads that do not use “magic words” such as “vote for Candidate X” or similar phrases are not required to file reports. The Act would close that loophole by requiring reporting of “electioneering communications” – that is, campaign ads that refer to a clearly identified candidate and are distributed within 30 days before a primary or special election or 60 days before a general election – in the same manner as other ads.
- **Require prompt reporting of all campaign ads purchased by political action committees or other third parties during the campaign season.** To ensure that voters know who is behind a campaign ad in the critical days before an election or primary, the Act would require any person (other than a candidate or political party) who spends \$500 or more on campaign ads during an election period to file a disclosure report within 24 hours.
- **Requires third-party ads to include a reference to the Commissioner of Elections website, as well as a “Paid For By...” disclaimer.** The Act would require all third-party ads having a fair market value of \$500 or more to

include the following statement: "Learn more about [name of person] at [Commissioner of Elections' web address]." By informing voters that they can review the campaign finance reports filed by the entity or person who placed the ad, this message will help voters make informed decisions and give proper weight to different speakers and messages. The Act includes a "Paid For By..." disclaimer requirement consistent with U.S. Supreme Court decisions.

- **Require the identification of a "responsible party" for large contributions by PACs, corporations and other entities.** The bill would enhance disclosure requirements by requiring reports to include the name and address of one responsible party – that is, a person who exercises direction or control over the activities of the entity – for any non-individual donor that contributes more than \$1,200 in an election cycle. In addition, the bill would enhance and clarify the information required to be disclosed by political committees when filing Statements of Organization, including any candidates the committee intends to support or oppose.

The proposals set forth in the Act benefitted from input from Common Cause, the Brennan Center for Justice, and the State Commissioner of Elections. The Act would become effective in June 2013 to allow time for system upgrades and the promulgation of regulations governing the disclosures, electronic filing requirements and procedures for eliminating duplicative paperwork.

A separate bill would increase the penalties for filing late reports from \$50 per month to \$50 per day. In addition, it would clarify that a person cannot be held criminally liable for filing a late report.